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Kazakhstan's Climate for Foreign Investment

Kazakhstan's Compliance with Investor Arbitrations

- Kazakhstan has been a member of the International Center for Settlement of Investment Disputes ("ICSID") since 1992.
- Kazakhstan has had 19 completed investor-state arbitration cases. For comparison, the U.S. has had 20, Canada has 31, and Spain has 53.
- Kazakhstan's results for the 19 completed cases include:
 - 10 were won with the claims being dismissed in their entirety;
 - 2 were settled before a determination was made; and
 - 6 were lost with the award either promptly paid or settled before/during the appellate process.
 - **Only 1 case – the Stati case – has ever been subject to a post-appellate challenge to enforcement.**

The Stati/Chapman/Argentum Case is Unique as the Arbitration Award was Procured by Fraud

- Anatolie Stati and Gabriel Stati (Moldovan citizens), through various entities they owned and/or controlled (collectively referred to as "Stati"), purchased two pre-existing oil and gas companies in Kazakhstan.
- One of Stati's entities – Ascom Sudd – is on the Commerce Department's Export Administration Regulations sanctions list for persons who have engaged in activities "contrary to the national security or foreign policy interests of the United States."
- Stati raised funds for purposes of the Stati Kazakh operations by, among other things, issuing bonds out of one of their offshore entities, a BVI company called Tristan Oil.
- In July 2010, Stati commenced an investor arbitration against the Republic of Kazakhstan under the Energy Charter Treaty, which arbitration was conducted before the Arbitration Institute of Stockholm Chamber of Commerce.
- In December 2013, the arbitral tribunal ruled in Stati's favor entering an arbitration award for the Stati petitioners in the amount of approximately \$500M. **The amount of the award was based, in large part, on Stati's financial statements, the legitimacy of which was assured by KPMG audit reports.**
- Daniel Chapman, through various entities he managed and/or owned, including first Black Creek and later Argentem, purchased bonds issued by Stati over a period of time spanning from before the investigation until after the arbitration.
- In 2012, Mr. Chapman, and other bond holders, entered into a sharing agreement through which the bond holders would receive 70% of any recovery from the arbitration decision and Stati would receive the other 30%.

The Fraud Behind the Award

- In April 2019, Kazakhstan's counsel was able to depose Stati's former CFO – Artur Lungu – who confirmed that Stati misrepresented transactions, including related party transactions, to KPMG.

- Based on the testimony from the CFO, and other information, KPMG, as required by International Audit Standards, instituted an internal investigation, including inquiries issued to Stati to rebut the testimony.
- After Stati failed to respond, KPMG notified Stati that: (1) it was withdrawing multiple audited reports, including three years of combined audited statements for multiple Stati entities, including Tristan Oil; (2) the reports could not and should not be relied upon by anyone; and (3) Stati was to notify anyone in possession of the reports that they were withdrawn and were not to be relied upon.

Relevant Court Proceedings of Interest

- **United Kingdom**
 - Stati filed a petition to have the arbitration award confirmed and entered as a judgment.
 - After several days of hearings, the UK High Court in London determined that Kazakhstan presented sufficient evidence to establish a prima facie case that the award was obtained through fraud and determined that a full trial on the matter should go forward.
 - In response, Stati sought to voluntarily withdraw its petition on the basis that it did not have the funds to proceed, which effort was initially denied by the High Court.
 - The appellate court determined that Stati could voluntarily withdraw its petition but only on the following conditions: (1) the initial order freezing Kazakhstan's assets would be vacated in its entirety; (2) Stati could never seek to enforce the award in the UK ever again; and (3) Stati would have to pay for the fees and costs incurred by the Government of Kazakhstan in defending the petition (an amount which has not been conclusively settled yet but will be in millions of dollars).
 - Instead of addressing the fraud on the merits, Stati chose to accept the conditions and withdraw its petition.
- **Luxembourg**
 - Based largely on the KPMG withdrawal letter and deposition of Lungi, the Luxembourg Supreme Court invalidated a lower court's recognition of the award and remanded the matter for further proceedings.
 - Kazakhstan has filed criminal proceedings in Luxembourg. In February 2020, the Luxembourg courts stayed certain Stati efforts to execute on the award pending the completion of these criminal proceedings.
- **United States**
 - D.C. District Court Judge Amy Berman Jackson recognized the award in a summary proceeding, pursuant to the NY Convention, which provides for very limited avenues to challenge recognition. This decision was affirmed by the D.C. Circuit.
 - Kazakhstan sought to raise the new evidence of fraud (deposition testimony and KPMG letter) but was procedurally barred from doing so.
 - Kazakhstan filed a separate claim against Argentum in NY State Court alleging that Argentum discovered the Stati fraud and worked with Stati to conceal and further the fraud in order to protect the arbitration award.
 - At least one US-based investor has joined Kazakhstan's lawsuit in NY.
 - Argentum asked permission from Judge Berman Jackson to file a motion to enjoin Kazakhstan's NY suit on the basis that Judge Berman Jackson already rejected the Stati fraud in connection with her decision to recognize the award.

- Judge Berman Jackson denied Argentum's request to even file the motion and made clear that the merits of Kazakhstan's fraud claim were never addressed.
 - The merits of the fraud are now the subject of the active litigation in NY against Argentum.
- Court proceedings remain open in additional European jurisdictions.